

Work Session

Agenda Item #	8
Meeting Date	March 28, 2005
Prepared By	Barbara B. Matthews
Approved By	

Discussion Item	Discussion of City Manager's report on legal service costs and related issues
Background	In recent weeks, there has been considerable discussion about the City's legal service costs and related issues. These issues include the provisions of the City's Charter relative to over-spending and the budgetary amendment process. The City Manager has reviewed this matter and would like to provide the City Council with her findings.
Policy	Article VIII of the Municipal Charter of the City of Takoma Park sets forth the City's financial and budgetary procedures.
Fiscal Impact	None
Attachments	Memo dated March 24, 2005 from City Manager Barbara Matthews to City Council regarding legal service costs and related issues
Recommendation	The City Manager will review the results of her review of the City's legal service costs with the City Council and respond to any questions that the City Council may have.
Special Consideration	

Memo

To: City Council
From: Barbara B. Matthews, City Manager
Date: March 24, 2005
Re: Legal Service Costs and Related Issues

In recent weeks, there has been considerable discussion about the city's legal service costs and related issues. These issues include the provisions of the city's Charter relative to over-spending and the budgetary amendment process. The purpose of this memo is to provide you with the results of my research to date and my thoughts on these matters.

Legal Service Costs

Legal costs are budgeted as a separate division in the General Government Department. The following table reflects the amount budgeted for the Legal Division, the revised budget where applicable, and expenditures for fiscal years FY2001 through FY2004:

Fiscal Year	Adopted Budget	Revised Budget	Actual Expenditures	Budget Variance
2001	\$83,000	No amendment	\$170,910	(\$87,910)
2002	\$97,000	No amendment	\$118,552	(\$21,552)
2003	\$97,000	\$114,000	\$253,526	(\$139,526)
2004	\$129,000	No amendment	\$215,532	(\$86,532)

The figures for FY2001 through FY2003 reflect audited figures. Expenditures for FY2004 reflect unaudited numbers.

As required by law, an independent audit is conducted of the City's general purpose financial statements. One of the schedules included in these financial statements compares budgeted to actual expenditures and notes both positive and negative variances. Budget variances for the Legal Division, as well as other service areas, are referenced in this schedule.

Establishment of Budget

In establishing the City's annual budget, it is customary to review data for prior fiscal years to determine historical trends in spending in the various service areas. Some budgetary areas, including legal services, are subject to change from year to year.

One factor that can affect a municipality's legal costs is the extent of litigation in a particular year, which can be difficult to predict. Additionally, special, one-time project work can result in variations in expenditures. Examples of this type of activity would include Silber & Perlman's recent work on the proposed East Hampshire Development and research on the issue of hazardous materials transport.

In light of the aforementioned budget variances in the Legal Division, I reviewed the City's legal expenditures for FY03 and FY04 to determine the major functional areas of cost. The results of this review are summarized below:

- Costs for legal advice constituted the largest component of the City's costs during FY03 and FY04. Expenditures were in the range of \$70,000 to \$80,000 during each of these years.
- Approximately \$55,000 was expended for COLTA-related legal services in both FY03 and FY04. These services included, but are not limited to, attendance at COLTA hearings and the drafting of orders.
- Litigation costs, which included prosecution of municipal infraction cases, were in the range of \$28,000 to \$34,000 in both FY03 and FY04.
- Work on the recodification of the Takoma Park Code occurred during both fiscal years. Approximately \$70,000 was expended in FY03 while about \$28,000 was expended for this purpose in FY04.

The aforementioned services were performed at the direction of the City and in accordance with the scope of services set forth in the contract between the City and Silber & Perlman

As noted above, a significant component of the City's legal costs in FY03 and FY04 involved work performed by Silber & Perlman on the recodification of the City's Code. It is my understanding that the former City Manager requested the involvement of the City Attorney's Office in the review of various sections of the City's Code, which would be customary based on my past involvement in a recodification project. It does not appear, however, that the legal costs incurred by the City for this activity were taken into account in the formulation of the budget for FY03 and FY04. In addition, in light of the historical expenditure patterns, some adjustment in the amounts budgeted for certain on-going legal expenditures (such as legal advice and Commission on Landlord-Tenant Affairs administration) were warranted in my opinion.

In addition to the trend analysis discussed above, I have personally found it beneficial to consult with the City Attorney in establishing the legal service budget for the municipalities in which I have worked. The City Attorney can provide assistance in identifying any current litigation that may extend into the upcoming fiscal year, as well as any potential litigation that the City may need to address in the near future. The City Attorney can also provide the staff with an estimate of the legal costs the City may incur for these activities. It is my understanding that no such consultation between the City Attorney and the City Manager has taken place during the development of the Legal Division's budget.

Charter Provisions

During recent discussions of the City's legal service costs, it has been suggested by some parties that the aforementioned budget variances in the Legal Division constituted a violation of the Municipal Charter of the City of Takoma Park. Section 809 of the Municipal Charter of the City of Takoma Park states, part, the following:

"No officer or employee shall during any budget year expend or contract to expend any money or incur any liability or enter into any contract which by its terms involves the expenditure of money for any purpose, in excess of the amount appropriated for or transferred to that general classification of expenditures pursuant to this Charter."

This provision sets forth the legal level of budgetary control for the City, which is not prescribed by State law in Maryland. The essential phrase in this Section is “general classification of expenditures”.

The phrase “general classification of expenditures” is not defined in the Municipal Charter of the City of Takoma Park. In my professional experience, this terminology would not refer to a particular line item in the City’s budget but, rather, would pertain to a broader category of expenses.

On an annual basis as required by law, an independent firm conducts an audit of the City’s general purpose financial statements. The Notes to the General Purpose Financial Statements include a summary of the City’s significant accounting policies. Note 1 addresses the issue of budgetary data and practices, including the budgetary level of control. Both firms who have served as the City’s independent auditor in recent years have defined the level of budgetary control to be at the fund level. Put more simply, total General Fund expenditures may not exceed the adopted budget.

Budget Amendment Process

There has been concern expressed by some parties that the budget for the Legal Division was not amended in light of the aforementioned budget variances in the Legal Services Division. In light of these concerns, I thought it might be beneficial to share with you my perspective on the budget amendment process.

The annual budget represents the City’s best estimate of the resources that will be needed to meet the City Council’s service priorities during the fiscal year. As noted earlier in this memo, historical spending patterns serve as a useful guide in establishing the City’s operating budget. These figures may require adjustment to take into account a change in Council service priorities, inflationary adjustments in prices, etc.

The steps outlined above should produce a reasonable estimate of the City’s financial needs for each service area. It is not uncommon, however, for there to be variances (both positive and negative) between the approved budget and actual expenditures for a particular department or line item. These variances can be attributable to a variety of factors. For example, staff turnover can lead to savings in salary and fringe benefit costs and overtime costs in excess of the budgeted amount. Similarly, the City may expend more than the budgeted amount for snow and ice removal if the area experiences an unusually high number of inclement weather events. In these instances, no budget amendment amount is required or recommended in my opinion, provided that the overall budget is within the prescribed legal limit.

There are a number of circumstances when budget amendments are appropriate and should be made. In general, these situations involve an event that was not foreseen or contemplated at the time of the budget’s adoption and whose cost is of significant financial magnitude. For example, the City Council recently authorized the purchase of a trash truck at an approximate cost of \$170,000 that was not included in the City’s Capital Improvement Program for FY05. Another instance during the current fiscal year is the City Council’s decision to borrow monies for the street improvement program, which occurred after the budget for FY05 was adopted.

As noted above, one of the schedules included in the City’s general purpose financial statements compares budget to actual expenditures and notes both positive and negative variances. This information provides meaningful data for the City Council, the City’s management staff, and the public to compare how well the City budgets its resources and provides a guide for how the City should budget in the future.

Consequently, I recommend that budget amendments be made in a judicious manner. Budget amendments should not be processed to address a shortfall in a particular line item or department for expenditures that were anticipated in the City's budget. Used inappropriately, budget amendments could impede the integrity of the City's fiscal reporting and the openness and transparency of its financial transactions.

The Governmental Accounting Standards Board recognized and addressed this issue in the issuance of GASB 34. In accordance with GASB 34, a municipality is now required to disclose both its original and revised budget for both revenues and expenditures in its general purpose financial statements.

Conclusion

I recognize and appreciate the concerns that have been expressed by some members of the community regarding the City's legal service costs. As noted earlier in this memo, my review of this matter indicates that, prospectively, the amounts budgeted for certain on-going legal expenditures (such as legal advice and Commission on Landlord-Tenant Affairs administration) should be increased. Additionally, closer coordination with the City Attorney relative to the anticipated cost for litigation expenses is warranted.